

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

JOSE ABSALON ALDANA,

Petitioner,

v.

CIVIL ACTION NO. 3:05-CV-27
CRIM. ACTION NO. 3:03-CR-31-1
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Order entered April 6, 2005 [Crim. Doc. 301 / Civ. Doc. 3], this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on March 2, 2007 [Crim. Doc. 351 / Civ. Doc. 12]. In that filing, the magistrate judge recommended that this Court deny the petitioner's application under 28 U.S.C. § 2255 and dismiss this matter with prejudice and to strike it from the Court's docket.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to *de novo* review is waived. The Court is not required to review, under

a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were waived.

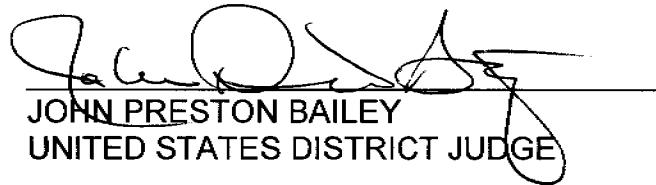
On November 21, 2007, Magistrate Judge Seibert granted the petitioner's motion for clarification of the original report and recommendations and recommended that the petitioner's amendments to § 2255 motions be denied because they raise new allegations that do not relate back to the original petition. This Court agrees.

Having reviewed the R & R, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Crim. Doc. 351 / Civ. Doc. 12] should be, and is, hereby **ORDERED ADOPTED**. Accordingly, it is **ORDERED** that petitioner's 28 U.S.C. § 2255 Motion [Crim. Doc. 299 / Civ. Doc. 1] be **DISMISSED with prejudice** for the reasons more fully stated in the R & R, and it shall be **STRICKEN** from the active docket of this Court. As such, the Motion for Judgment on the Pleadings [Crim. Doc. 316 / Civ. Doc. 5], Motion for Some Disposition [Crim. Doc. 336] and [Crim. Doc. 354] are hereby **DENIED**. As a final matter, the Government's motion to dismiss [Crim. Doc. 340] is **GRANTED**.

It is so **ORDERED**.

The Clerk is directed to mail a true copy of this Order to the *pro se* petitioner and to transmit copies to all counsel of record.

DATED: February 29, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE